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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/693,117	10/24/2003	Alan Draper	30373-11	1649

39607 7590 12/17/2004

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EXAMINER

KLEBE, GERALD B

ART UNIT	PAPER NUMBER
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3618

DATE MAILED: 12/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/693,117	Applicant(s) DRAPER ET AL.	
	Examiner Gerald B. Klebe	Art Unit 3618	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6, and 8-20 is/are rejected.
- 7) ☒ Claim(s) 7 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

M. B. Klebe
13 Dec 04

Attachment(s)

- | | |
|-------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>10/24/2003</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Abstract

1. Applicant is reminded of the proper language and format for an abstract of the disclosure:

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

The abstract is objected-to for the following: The recitation in lines 6-10: " This Abstract ... of the claims." is not appropriate content/language for the abstract. Refer MPEP § 608.01(b).

Claims Objections

2. Claim 18 is objected to because of the following informalities: the claim ends, inappropriately, with a semi-colon (;) rather than a period. Appropriate correction is required.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

Art Unit: 3618

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1, 3-6, and 8-9 are rejected under 35 U.S.C. 102(e) as being anticipated by Straka (US 4935638).

Straka (-638) discloses a vehicle step comprising:

(re: claim 1) a first elongate member (11) including a first coupling section (13) and a second elongate member (12) including a second coupling section (14); and wherein the first coupling section and the second coupling section are fixedly attached (as shown in Fig 1 and Fig 3); and,

(re: claim 3) wherein the first and second elongate members are substantially tubular and structured to couple to a vehicle (see Fig 1) ; and,

(re: claim 4) wherein the first elongate member (11) includes a first end (15) and a second end (13), wherein the first end is structured to couple to a vehicle and the second end (13) includes a male element (the end 13 fits into item 19); and,

(re: claim 5) wherein the second elongate member (12) includes a first end, a second end and a frame coupling member (16) wherein the first end (14) comprises a female element (being a tube into which item 60 is inserted) and the frame coupling member (16) is structured to couple to a vehicle; and,

(re: claim 6) further comprising an anti-rattle member (combination of 21 and 22; refer col 3, lines 5-16); and,

(re: claim 8) further comprising a band (19) sized to conceal a portion of the vehicle step; and,

Art Unit: 3618

(re: claim 9) further comprising a step surface (the top corrugated surface 50 of item 19) located on the first member, or the second member, or on both members.

5. Claims 1-5 and 9 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Elrod (US 2003/0178805).

Elrod discloses a vehicle step comprising:

(re: claim 1) a first elongate member including a first coupling section and a second elongate member including a second coupling section; and wherein the first coupling section and the second coupling section are fixedly attached; and,

(re: claim 2) wherein the first coupling section comprises a male element and the second coupling section comprises a female element wherein the male element is positionable within the female element: and,

(re: claim 3) wherein the first and second elongate members are substantially tubular and structured to couple to a vehicle; and,

(re: claim 4) wherein the first elongate member includes a first end and a second end, wherein the first end is structured to couple to a vehicle and the second includes a male element; and,

(re: claim 5) wherein the second elongate member includes a first end, a second end and a frame coupling member wherein the first end comprises a female element and the frame coupling member is structured to couple to a vehicle; and,

(re: claim 9) further comprising a step surface located on the first member, or the second member, or on both members.

6. Claims 10-13 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Elrod (US 2003/0178805).

Art Unit: 3618

Elrod discloses a vehicle step comprising:

(re: claim 10) a first member having a first end comprising a male element;

a second member having a second end comprising a female element ; and,

wherein the first member and the second member are fixedly attached by positioning the male element within the female element; and,

(re: claim 11) wherein the male element comprises an elongate tube and the female element comprises an aperture within the second member; and,

(re: claim 12) wherein the first member and the second member are fixedly coupled to a vehicle; and,

(re: claim 13) further comprising a step surface located on the first member, or the second member, or on both members (in Elrod, it both members further comprise a step surface, items 14a, b and c).

Claims Rejections - 35 USC § 102 or 103(a)

7. Claims 14-17 are rejected under 35 U.S.C. 102(e) as being anticipated by Elrod (US 2003/0178805) or, in the alternative, under 103(a) as being obvious over Elrod (2003/0178805).

a. As discussed above, relative to claims 10-13 the reference of Elrod discloses the apparatus of a vehicle step in which the method of claims 14-17 is considered inherent.

b. The examiner posits that the Elrod reference teaches the claimed method of the claims 14-17 because the method is inherently disclosed. The rationale for this inherency is that the prior art device of Elrod in its normal and usual application would necessarily require the claimed method for the assembly and mounting of the disclosed step apparatus on a vehicle. See

Art Unit: 3618

MPEP Sec. 2112.02, and refer *In re King*, 801 f2d 1324, 1326; 231 USPQ 136, 138 (Fed cir 1986).

c. However, even if not inherent, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the reference of Elrod to include the claimed method of claims 14-17. Because the prior art discloses all the structure necessary to perform the claimed functions, one of ordinary skill in the art would find the claimed method to be an obvious step in light of the disclosed structures of the reference of Elrod.

8. Claims 18-20 are rejected under 35 U.S.C. 102(e) as being anticipated by Elrod (US 2003/0178805) or, in the alternative, under 103(a) as being obvious over Elrod (2003/0178805).

a. As discussed above, relative to claims 10-13 the reference of Elrod discloses the apparatus of a vehicle step in which the method of claim 18 is considered inherent.

b. The examiner posits that the Elrod reference teaches the claimed method of claim 18 because the method is inherently disclosed. The rationale for this inherency is that the prior art device of Elrod in its normal and usual application would necessarily require the claimed method for the assembly and mounting of the disclosed step apparatus on a vehicle. See MPEP Sec. 2112.02, and refer *In re King*, 801 f2d 1324, 1326; 231 USPQ 136, 138 (Fed cir 1986).

c. However, even if not inherent, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the reference of Elrod to include the claimed method of claim 18. Because the prior art discloses all the structure necessary to perform the claimed functions, one of ordinary skill in the art would find the claimed method to be an obvious step in light of the disclosed structures of the reference of Elrod.

Art Unit: 3618

d. Regarding the further steps of the method as claimed in claims 19 and 20 Elrod discloses that the arranged two elongate members are suitable for shipment by either (claim 19) a non-commercial shipper, or for shipment by (claim 20) a commercial shipper (refer paragraphs [0025] and [0032]).

Allowable Subject Matter

9. Claim 7 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Prior Art made of Record

10. The prior art made of record and not relied upon is considered pertinent to Applicant's disclosure. The prior art of Weir, of Selland, of Elwell et al., of Holloway et al., of Straka (-085), and of Duret et al. each show features in common with some of the other structures of the inventive concept disclosed in the instant application.

Conclusion

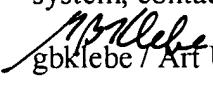
11. Any inquiry concerning this or earlier communication(s) from the examiner should be directed to Gerald B. Klebe at 703-305-0578, fax 703-872-9306; Mon.-Fri., 8:00 AM - 4:30 PM ET, or to Supervisory Patent Examiner Christopher P. Ellis, Art Unit 3618, at 703-308-2560.

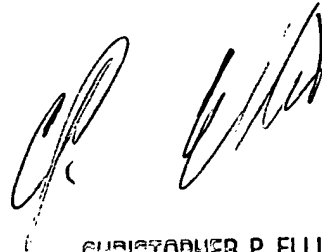
Official correspondence should be sent to the following TC 3600 Official Rightfax numbers as follows: Regular correspondence: 703-872-9326; After Finals: 703-872-9327; Customer Service: 703-872-9325.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

Art Unit: 3618

applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

 gbklebe / Art Unit 3618 / 13-Dec-04



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